IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

AS.No. 426 of 1994()

OS.504/1986 of I ADDL.SUB COURT,TRIVANDRUM

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APPELLANT/IST DEFENDANT:

L.LEELA, AMBILIKALA, MANCHADI, MALAYINKIL P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.BALAGOVINDAN
SRI L.MOHANAN

RESPONDENT/PLAINTIFF:

JANAKI SUKUMARI, CHRISTIAN VILLA, T.C.28/1408,
THIRUMALAP.O., THIRUVANANTHAPURAM.
BY

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

A.S.No.426 of 1994

Dated, this the 22nd day of October, 2007

JUDGMENT

First defendant in O.S.No.504/1986 on the file of the First Additional Sub Judge, Thiruvananthapuram is the appeallant. The respondent had filed a suit for specific performance alleging that the appellant had agreed to sell her properties for a consideration of Rs.55,000/- and received an amount of Rs.1,000/- as advance. Appellant had filed written statement admitting that she had borrowed an amount of Rs.7,000/- from the husband of the respondent and she had agreed to pay Rs.210/- as interest per mensem. It was contended that as there was default in payment of interest the alleged agreement was brought into existence with the help of police. The allegation that the appellant had agreed to sell the properties was denied. Subsequently the plaint was amended. The learned Subordinate Judge found that in the plaint there was no averment regarding the readiness and willingness of the respondent to get the sale deed executed. But relying on the evidence adduced by the appellant the court below found that the appellant is bound to pay an amount of Rs.6,176/-. The specific performance sought for was refused but a decree for money was passed. Challenging that decree this appeal is filed by the defendant..

2. The learned counsel appearing for the appellant has argued that there was no evidence to substantiate that the appellant had received any amount. Trial

court has considered every aspect of the matter. In the plaint it was averred that the respondent had paid an amount of Rs.1,000/- as advance to the appellant and thereafter she had paid Rs.1,100/- on 5.6.1985 and Rs.3,275/- on 30.9.1985 towards the amount due from the appellant to Kerala Financial Corporation. Respondent has produced Exts.A4 and A5 receipts. In addition to the above payments the respondent had paid the entire amount due from the appellant to SIDCO. The court below had found that an amount of Rs.6,176/- was due from the appellant to respondent. The decree under challenge was passed after considering all oral and documentary evidence adduced. That is a finding of fact based on good evidence. I do not find any reason to interfere with the judgment and decree passed by the court below. No merit in the appeal. It is only to be dismissed.

In the result, appeal is dismissed

C.M.P.No.2601/1994 will stand dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

A.S.No.426 of 1994

JUDGMENT

22nd October, 2007.